(16,859.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 286.

THE CITY OF NEW ORLEANS, THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, AND GEORGE B. PENROSE, TREASURER OF THE CITY OF NEW ORLEANS, APPELLANTS,

vs.

MARY G. T. STEMPEL (WIFE OF EDWARD STEMPEL), GUARDIAN OF THE INFANTS FANNIE TOBIN McCAN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Caption	a	1
Bill of complaint	1	1
Rule for injunction	10	7
Marshal's return on copy of rule for injunction	11	7
Restraining order issued to the City of New Orleans, etc.	11	8
Marshal's return on restraining order	13	9
Marshal's return on restraining order issued to George B. Penrose, treasurer of the city	13	9
Subpœna in chancery issued to the City of New Orleans	14	9
Marshal's return on subpœna	15	10
Marshal's return on subpœna in chancery issued to George B. Penrose, treasurer of the city of New Orleans	15	10

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1898.

	Original.	Print.
Marshal's return on subpœna in chancery issued to the Board of Assessors of the Parish of Orleans	15	10
Order for continuance of rule for injunction	16	10
Order for continuance of rule for injunction	16	11
Hearing and submission	16	11
Appearance of Geo. B. Penrose, city treasurer, and the City of New Orleans	17	11
Appearance of Board of Assessors and Tax Collectors	17	12
Order that restraining order remain in force, etc	17	12
Motion and order granting extension of time to City of New Orleans to plead or answer	18	12
Motion for extension of time for answer of Board of Assessors and order	19	13
Decree *pro confesso* against City of New Orleans	19	13
Decree *pro confesso* against Board of Assessors	20	13
Answer	20	14
Motion to set aside judgment *pro confesso* and order	26	18
Order for continuance	26	18
Order for case continued for the term	26	18
Order fixing case	27	18
Order for continuance	27	19
Hearing of cause, note of evidence, and submission	27	19
Complainant's evidence	29	20
Decree of supreme court of Louisiana in succession of Hester Calloway McCan, No. 11793, dated December 2, 1895	29	29
Order authorizing guardian to take possession of and remove property from this State and affidavit of Eugene D'Hérété, deputy clerk, in succession of Chas. P. McCan, civil district court, parish of Orleans	30	21
Exhibit "3"—Testimony of Albert Baldwin	32	22
"4"—Copy of assessment-roll, city of New Orleans, square 19, No. 385, in the name of estate of D. C. McCan, marked Exhibit "O"	42	27
"5"—Affidavit of Arthur B. Leopold	44	27
Exhibit A—Petition of Mrs. Stempel, March 17, 1896	45	28
B—Petition of Mrs. Stempel, April 9, 1896	50	31
Receipt for personal taxes, estate of D. C. McCan, 1896	52	32
Exhibits "7"—Notices from treasurer of city of New Orleans, dated May 21, June 23, and December 2, 1896, and January 7, 1897	53	33
"8"—Four (4) bonds and undertakings given by Mary Tobin Stempel, as guardian, with American Surety Co. of New York as surety, in favor of the minors, Fanny Tobin, Chas. Patterson, David Chambers, and Kate Elizabeth McCan, each for $200,000, in the supreme court, county of Kings, State of New York	57	35
Judgment of the civil district court, parish of Orleans in succession of D. C. McCan, No. 39737, recognizing minors McCan as sole legal forced heirs of D. C. McCan and putting in possession, etc., of property, etc	77	48

	Original.	Print.
Defendants' evidence	79	50
Tax receipt for year 1896 of city of New Orleans from estate of D. C. McCan on personal property, marked "D 1"	79	50
Decree	80	51
Assignment of errors	82	52
Petition for appeal	84	53
Order thereon	85	54
Bond on appeal	85	54
Citation of appeal	87	55
Proof of service of citation	88	56
Clerk's certificate	89	56

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

MRS. MARY G. T. STEMPEL, Guardian, etc., Appellee,
versus
THE CITY OF NEW ORLEANS, GEORGE B. PENROSE, City Treasurer, and The Board of Assessors for the Parish of Orleans, Appellants.
} No. 12598. In Equity.

E. Howard McCaleb, Esquire, for appellee.

Samuel L. Gilmore, Esquire, city attorney, and J. J. McLoughlin, Esq., assistant city attorney, for The City of New Orleans & Geo. B. Penrose, city treasurer, appellants.

F. C. Zacharie, Esquire, for The Board of Assessors for the Parish of Orleans, appellant.

Appeal from the United States circuit court, eastern district of Louisiana (New Orleans division), to the Supreme Court of the United States, returnable within thirty (30) days from the 28th day of March, A. D. 1898, at the city of Washington, D. C.

Transcript of Appeal.

1 U. S. Circuit Court, Eastern District of Louisiana.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS.
} No. 12598. In Equity.

Bill of Complaint.

Filed January 9, 1897.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in equity:

Mary G. T. Stempel, wife of Edward Stempel, and by her said husband herein joined, authorized, and assisted, guardian of the infants Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, all citizens of the State of New York, and residing in the city of New York, in said State, brings this her bill of complaint against The Board of Assessors of the Parish of Orleans, The City of New Orleans, a political corporation, duly created and organized under the laws of the State of Louisiana, and George B. Penrose, treasurer of said city of New Orleans, all citizens of the State of Louisiana, domiciliated and residing within the jurisdiction of this honorable court; and thereupon your oratrix complains and says:

1st. That on the 20th day of November, A. D. 1894, your oratrix was duly appointed guardian of her above-named minor children,

issue of her marriage with Charles P. McCan, deceased, by the honorable the supreme court of the county of Kings, State of New York, and she duly qualified as such by taking the oaths and
2 giving the bonds required by the laws of the said State of New York and the decree of the supreme court of the county of Kings, State of New York, aforesaid.

2nd. That subsequently your oratrix produced satisfactory evidence of her appointment as guardian aforesaid to the honorable the civil district court for the parish of Orleans, division "D," and was authorized by said court to sue for and recover the property, rights, and credits belonging to said infants in this State, and to take possession of and remove their property out of the State of Louisiana, after she had furnished satisfactory proof to the court that no debts existed in this State.

3rd. That your oratrix instituted suits in the matter of the successions of Hester C. McCan and David C. McCan, numbered respectively 43186 and 39737 of the docket of the civil district court for the parish of Orleans, and her wards and infants above named were by final judgments recognized as the sole legal heirs of said Hester C. McCan and David C. McCan, and as such, through your oratrix, as their guardian, put in possession of the property and estates of said deceased respectively; which said judgments were rendered and became final on the — day of ——, 1896, and your oratrix caused said judgment- to be duly recorded in the conveyance office of the parish of Orleans.

4th. That besides the real estate so inherited by the children and wards of your oratrix from their grandfather, David C. McCan, and their grandmother, Hester C. McCan, and of which they were sent into possession, there were premium bonds issued by the city of New Orleans of the value of $118,227.60, consolidated bonds of the city of New Orleans of the value of $22,000.00, and $88,040.00 of bonds of the State of Louisiana, known as Louisiana new consols and baby bonds, the whole exceeding in amount the sum of
3 two hundred and twenty-eight thousand two hundred and seventy-one $\frac{60}{100}$ dollars ($228,271.60), besides a number of notes, secured by mortgage, drawn by various parties residing in the State of Louisiana to their own order and by them endorsed, exceeding in amount the sum of six hundred thousand dollars ($600,000); that all and singular the foregoing facts will more fully and at large appear by reference to the records and proceedings in the several successions of Charles P. McCan, No. 18811, and David C. McCan, No. 39737, and of Hester C. McCan, No. 43186, of the docket of the civil district court for the parish of Orleans.

5th. That after the rendition of said judgments, and while the assessment-rolls of the city of New Orleans were being exposed, during the month of March, 1896, your oratrix caused the same to be examined, and on ascertaining that there appeared upon the assessment-rolls of the first municipal and 2nd representative district of the city of New Orleans an assessment in the name of the estate of D. C. McCan for money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000, your oratrix filed a written

application with said assessors, demanding that said assessment should be cancelled, annulled, and set aside for the reason that her infant wards aforesaid had been sent into possession of the property so inherited by them from the estate of D. C. McCan, and to whom the same then and now belongs and by which said estate was terminated and had ceased to exist; that she and her said wards were all residents and citizens of the State of New York; that under the Constitution, laws, and jurisprudence of the courts of the United States the power of taxation is limited to persons, property, and business within the jurisdiction of the State; that debts are not property, and that non-residents, in virtue of debts due them,
4 could not be considered holders of property within the limits of the State for the purpose of taxation; that debts have their situs at the residence of the creditors, and can only be taxed there and not elsewhere, and she prayed by written petition, addressed to the said board of assessors of the parish of Orleans, that the assessment in the name of the "estate of D. C. McCan, on money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000.00," be erased and cancelled and stricken from the rolls as illegal, erroneous, and void; but the said board of assessors refused to comply with this very reasonable, just, and legal demand of your oratrix.

6th. That subsequently, between the 20th day of March and the 10th day of April, 1896, in which said illegal assessment was made, your oratrix, by her attorney, addressed a written communication to the standing committee on assessments of the city council of the city of New Orleans, calling their attention to the petition previously filed with the said board of assessors, and renewed the request therein contained, and also asked to be heard concerning said assessment, but no heed whatever was paid to said communication. She was deprived of the hearing provided by law and demanded by her attorney, and said illegal assessment allowed to remain upon the assessment-rolls of said city.

7th. Now your oratrix complains and says that the treasurer of the city of New Orleans has persisted and insisted upon the enforcement and collection of taxes for the city of New Orleans levied upon said erroneous, illegal, and void assessment in the sums of "estate D. C. McCan, moneys loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000," and has demanded of your oratrix payment of said city taxes for the year 1896 levied upon the assessment, to wit, the sum of sixteen thousand nine hun-
5 dred and forty eight $\frac{3}{100}$ dollars ($16,948.02), and has threatened the seizure and advertisement of the property of her wards to pay said illegal taxes, as will more fully appear by the annexed notices, dated May 21, 1896, June 23, 1896, December 2, 1896, and January 7th, 1897, herewith filed for greater certainty and made part hereof, and to which your oratrix at all times craves reference.

8th. Your oratrix avers and charges that at the time said illegal assessment was made by the board of assessors of the parish of Orleans, as aforesaid, the estate of D. C. McCan had ceased to exist,

the legal heirs, the infant wards of your oratrix above named, having been recognized and sent into possession thereof through your oratrix as their guardian, and she was authorized to remove their property from the State of Louisiana, as aforesaid, after due publication and proof showing that there were no debts due and owing by them in this State.

9th. That said illegal and void assessment so entered upon the rolls of the board of assessors of the parish of Orleans, as aforesaid, in the name of "estate D. C. McCan, on money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000," was and is wrongfully made and levied upon evidences of debts and other incorporeal rights, which, when treated as property for the purpose of taxation, can only be assessed at the domicil or place of residence of the creditors (*i. e.*, your oratrix's infant wards), without regard to the domicil of the debtors, and which credits are not within the jurisdiction of the State of Louisiana and are not property within this State, but property of her said wards, taxable only at the place of their residence and domicile in the State of New York.

10th. That the attempt of the city of New Orleans to collect the taxes upon bonds issued by her and upon the bonds issued by the State, which compose a part of the credits on which the as-
6 sessment made by said board of assessors were wrongfully levied under pretended authority conferred by the laws of Louisiana, impairs the obligation of the contract entered into by said city and the State of Louisiana with the holders of their obligation, and violates the Constitution of the United States.

11th. (*a*) That your oratrix has given large bonds in compliance with the orders of the supreme court of the county of Kings, State of New York, by which she was appointed guardian, as aforesaid, amounting to the sum of eight hundred thousand dollars ($800,000) or thereabouts for the faithful performance of her duties and for the preservation of the property belonging to her wards in her possession as trustee thereof, and to which tribunal she has to account for her administration and gestion.

(*b*) That your *orator* fears and believes that George B. Penrose, treasurer of the city of New Orleans, will execute the threats contained in said notices above mentioned, and will proceed to the illegal seizures and advertisements of the property belonging to your oratrix's infant wards above named, and that the injury arising therefrom and inflicted thereby on the property of her said wards in her care, custody, and control, as guardian and trustee for their benefit, will be irreparable and irremediable; that the seizures and sales of said property to pay and satisfy said illegal taxes would occasion and cause a breach of the trust imposed upon your oratrix.

That your oratrix is entitled to the protection of this honorable court to stay and prevent the spoliation of the trust property belonging to her above-named infant wards from the threatened seizures and sales thereof by the treasurer of the city of New Orleans aforesaid.

12th. Your oratrix alleges and avers that she has paid
7 unto the city of New Orleans and also to the State of Louisiana all the taxes assessed and due upon real estate belonging to her minor wards and situated in the city of New Orleans, appearing on the assessment-rolls for the year 1896, and that neither she nor her infant wards represented by her as their guardian are in any way, manner, or form indebted unto the city of New Orleans or to the State of Louisiana for taxes on real estate situated in the city of New Orleans, the same having been paid by her; and your oratrix has also paid to the said city of New Orleans the personal taxes due, assessed, and owing on furniture, statuary, and jewelry situated in the city of New Orleans, valued at $2,500, to the city of New Orleans for the year 1896.

13th. Now your oratrix avers and so charges that notwithstanding the said written applications to the board of assessors of the parish of Orleans and committee on assessment of the city council of New Orleans, and the demands made for the cancellation of said illegal assessment aforesaid, they combining, colluding, and confederating together with the fraudulent intent and design of harassing, injuring, and oppressing the infant wards of your oratrix, and despoiling them of their property in her possession and under her control as guardian and trustee aforesaid, persisted in said wrongful assessment, suffered the same to be and remain in the name of the estate of D. C. McCan, although they were advised that no such estate then existed, insisted upon the maintenance of said illegal and void assessment on property, a portion of which, to wit, the State and city bonds above stated, were specially exempted from taxation, and all of which intangible property and incorporeal rights so assessed were outside and beyond the jurisdiction of said board of assessors of the parish of Orleans, not located in the city of New
Orleans or in the State of Louisiana; that the acts and
8 doings of said assessors and committee on assessments in entering said assessment upon the rolls, and retaining it there after the written protests, remonstrance, and demand for its cancellation, are illegal, fraudulent, and contrary to equity and good conscience; that the threatened seizure and sale of the property belonging to the infant wards of your oratrix to pay and satisfy the illegal municipal taxes levied on said void assessment, amounting to the sum of sixteen thousand nine hundred and forty-eight $\frac{2}{100}$ dollars ($16,948.02), will occasion, as your oratrix believes and fears, a multplicity of suits which should be avoided and prevented.

14th. That your oratrix is without adequate remedy at law, and that in order to prevent a breach of trust and spoliation and waste of the trust property under the administration of your oratrix, wasteful and expensive litigation growing out of the threatened seizures and tax sales of the property of said infant wards, which will occasion and cause a multiplicity of suits, your oratrix is entitled to invoke the equitable writ of injunction, forbidding and prohibiting the City of New Orleans and George B. Penrose, treasurer of the said city of New Orleans, from seizing, advertising, selling, or attempting to sell any of the property, rights, or credits belonging to

said infant wards above named, and in her possession and under her control as guardian, to pay and satisfy any municipal taxes illegally levied in the name of the "estate D. C. McCan, on money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000," for the year 1896, under the false pretext and subterfuge that the same are liable for said taxes.

Wherefore your oratrix prays:

1st. That it may please your honors to grant unto your oratrix the most gracious writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said City of
9 New Orleans, its officers, agents, attorneys, and representatives; to George B. Penrose, treasurer of said city, enjoining, forbidding, and prohibiting them and each of them from in any way or by any proceeding whatever enforcing the collection of the said taxes resulting from the illegal assessment hereinabove complained of, and from seizing, advertising, selling, or attempting to sell all or any of the property whatever belonging to the infant wards, Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, and in the possession and under the control of your oratrix, as guardian and trustee thereof, to pay and satisfy any claim or demand for said taxes assessed for the year 1896 in the name of estate of D. C. McCan.

2nd. That the board of assessors of the parish of Orleans be condemned and ordered to erase and cancel from the assessment-rolls of 1896 the assessment against the "estate of D. C. McCan," on the rolls of the "3rd assessment district, square 19, of moneys loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000.00," and that said assessment be declared illegal, null, and void.

3rd. That the assessment and municipal tax levied thereon aforesaid be declared illegal and violative of the constitution and laws of the State of Louisiana and the Constitution of the United States.

4th. That complainant may have such other and further order, decree, and relief in the premises as may be equitable.

5th. That the preliminary writ of injunction herein to be issued be made peremptory and perpetual.

And may it please your honors to grant unto your oratrix the writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the City of New Orleans, through its
10 mayor, Hon. W. C. Flower; George B. Penrose, treasurer of the city of New Orleans, and to the Board of Assessors of the Parish of Orleans, commanding them and each of them, by a certain day and under a certain penalty to be inserted, to be and appear before this honorable court in equity, and then and there to answer the premises under oath, and, further, to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience.

6th. And your oratrix further prays for costs and for all general and equitable relief, and, as in duty bound, she will ever continue to pray.

(Signed) E. HOWARD McCALEB,
Solicitor for Complainant.

E. Howard McCaleb, being duly sworn, deposes and says that he is the attorney-at-law and solicitor of Mrs Mary G. T. Stempel, guardian of her minor infants, Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, who reside in the State of New York and who are now absent from the State of Louisiana; that he has read the bill of complaint in this cause and knows the contents thereof; that all facts therein stated are true to the best of affiant's knowledge and belief.

(Signed) E. HOWARD M'CALEB.

Sworn to and subscribed before me this 9 day of January, A. D. 1897.

(Signed) H. J. CARTER,
U. S. Commissioner.

Order.

Let the defendants show cause on Saturday, January 16, 1897, at 11 o'clock a. m., before the circuit court, why an injunction
11 *pendente lite* should not issue as prayed for, and in the meantime and until the hearing and decision on the motion for an injunction let a restraining order issue, restraining said defendants as prayed for.

Jan'y 9th, 1897.

(Signed) DON A. PARDEE,
Circuit Judge.

Marshal's Return on Copy of Rule for Injunction.

Filed Jan'y 12, 1897.

Received by U. S. marshal, New Orleans, La., 2.45 p. m., January 9, '97, & on the 11th day of Jan'y, '97, I served a true copy of the within rule on the following-named persons, to wit:

On the City of New Orleans, personally on W. C. Flower, mayor thereof.

On Geo. B. Penrose " "

" Board of Assessors " " on W. K. Horn, secretary thereof.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Restraining Order Issued to the City of New Orleans, its Officers, &c., January 9, 1897.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS. } No. 12598.

12 The President of the United States to the City of New Orleans, its officers, agents, attorneys, and representatives, Greeting:

Whereas it has been represented unto us in our said circuit court, on the part of Mary G. T. Stempel, guardian, &c., in a bill in equity lately exhibited against you and each of you touching certain matters and things therein set forth, and whereas the Honorable Don A. Pardee, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause whereby you are required to show cause on the 16 day of January, 1897, at 11 a. m., why an injunction should not issue as prayed for in said bill of complaint, and whereas the said judge has granted and allowed an order restraining you immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said City of New Orleans, your agents, attorneys, and servants, and each of you, are hereby commanded and strictly enjoined under the penalty of the law that you and each of you absolutely refrain and desist from in any way or by any proceeding whatever enforcing the collection of the said taxes resulting from the illegal assessment hereinabove complained of, and from seizing, advertising, selling, or attempting to sell all or any of the property whatever belonging to the infant wards Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, and in the possession and under the control of your oratrix as guardian and trustee thereof to pay and satisfy any claim or demand for said taxes assessed for the year 1896 in the name of estate of D. C. McCan.

And that you, the said City of New Orleans, your agents,
13 attorneys, and servants, and each of you, remain so inhibited and restrained until the further order of our said court in the premises.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 9 day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return on Restraining Order. Filed Jan'y 12, 1897.

Received by U. S. marshal, New Orleans, La., 2.45 p. m., January 9, '97, and on the 11th day of Jan'y, '97, I served a true copy of the within restraining order on the City of New Orleans, through Hon. Walter C. Flower, mayor thereof, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Marshal's Return on Restraining Order Issued to George B. Penrose, Treasurer of the City of New Orleans. Filed Jan'y 12, 1897.

Received by U. S. marshal, New Orleans, La., 2.45 p. m., January 9, '97, & on the 11th day of Jan'y, 97, I served a true copy of the within restraining order on Geo. B. Penrose, treasurer of the city of New Orleans, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

14 *Subpœna in Chancery. Issued to the City of New Orleans, through its Mayor, Hon. W. C. Flower, January 11th,* 1897.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon the City of New Orleans, through its mayor, Hon. W. C. Flower, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of February, 1897, then and there to answer a bill in chancery filed against City of New Orleans *et als.*, wherein Mary G. T. Stempel, wife of Edward Stempel, guardian of Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, are complainants and said City of New Orleans *et als.* are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 11 [SEAL.] day of January, in the year of our Lord one thousand eight hundred and ninety-seven, and the 121 year of American Independence.

(Signed) E. R. HUNT, *Clerk.*

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States circuit court on or before the first Monday of February, 1897; otherwise the bill may be taken *pro confesso*.

(Signed) E. R. HUNT, *Clerk*.

15 *Marshal's Return on Subpœna. Filed Jan'y* 12, 1897.

Received by U. S. marshal, New Orleans, La., January 11, '97, & on the same day I served a true copy of the within subpœna in chancery on the — New Orleans, through Hon. Walter C. Flower, mayor thereof, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Marshal's Return on Subpœna in Chancery Issued to George B. Penrose, Treasurer of the City of New Orleans. Filed Jan'y 12, 1897.

Received by U. S. marshal, New Orleans, La., January 11, '97, & on the same day I served a true copy of the within subpœna in chancery on Geo. B. Penrose, treasurer of the city of New Orleans, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Marshal's Return on Subpœna in Chancery Issued to the Board of Assessors of the Parish of Orleans. Filed Jan'y 12, 1897.

Received by U. S. marshal, New Orleans, La., January 11, '97, & on the 12th day of Jan'y, '97, I served a true copy of the within subpœna in chancery on the Board of Assessors for the Parish of Orleans, through E. K. Skinner, president thereof, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

16 *Order: Continuance of Rule for Injunction.*

Extract from Minutes.

SATURDAY, *January 16th*, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS & ALS. } No. 12598.

This case not being reached this day, on motion of solicitor for complainant—

It is ordered that the rule for an injunction be continued to Saturday, January 23, 1897, at 11 a. m.

Order: Continuance of Rule.

Extract from the Minutes.

SATURDAY, *January* 23, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS. } No. 12598.

Owing to the proceedings to be had this day in memory of the late Chief Justice Merrick and Hon. J. Ad. Rozier—

It is ordered that the rule for an injunction herein go over to Jan'y 30, 1897, for hearing.

Hearing and Submission.

Extract from the Minutes.

November Term, 1896.

NEW ORLEANS, SATURDAY, *January* 30, 1897.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS & ALS. } No. 12598.

This cause came on to heard upon the motion of complain-
17 ant for an injunction—E. Howard McCaleb appearing for complainants; J. J. McLoughlin, ass't city att'y, for G. B. Penrose, city treasurer, & City of New Orleans; F. Zacharie for Board of Assessors—and was argued and submitted, when the court took time to consider.

Appearance of Geo. B. Penrose, City Treasurer, and the City of New Orleans.

Extract from the Chancery Order Book.

MONDAY, *February* 1, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS. } No. 12598.

Now come Geo. B. Penrose, treasurer of city of New Orleans, and the City of New Orleans, through J. J. McLoughlin, ass't city att'y, and enter their appearance to the bill of complaint.

Appearance of Board of Assessors and Tax Collectors.

Extract from the Chancery Order Book.

SATURDAY, *Feb'y* 6, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS ET ALS. } 12598.

Now comes F. C. Zacharie and enters his appearance as solicitor for Board of Assessors & Tax Collectors to the bill of complaint herein.

Order: Restraining Order to Remain in Force, etc.

Extract from the Minutes.

November Term, 1896.

18 NEW ORLEANS, MONDAY, *February 8th*, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

In this cause, heretofore submitted on an application for an injunction—

It is ordered that the restraining order issued herein remain in force until the further orders of this court.

Motion and Order Granting Extension of Time to City of New Orleans to Plead or Answer. Entered and Filed Feb'y 27, 1897.

United States Circuit Court, Eastern District of Louisiana. In Equity.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

On motion of Samuel L. Gilmore, city attorney, and James J. McLaughlin, assistant city attorney, solicitors for defendants herein, and upon suggesting to the court that defendants by reason of public duties which have so occupied their time that they have been unable as yet to furnish their solicitors with data sufficient to prepare their defence herein, and on further suggesting that they desire a delay of one month within which to plead or answer—

It is ordered that a delay of one month be granted defendants to plead or answer herein.

New Orleans, La., Feb. 27, 1897.

(Signed) CHARLES PARLANGE,
U. S. Judge.

19 *Motion for Extension of Time for Answer of Board of Assessors and Order. Entered and Filed March 6, 1897.*

U. S. C. C., East. Dist. of La. In Equity.

MRS. MARY G. T. STEMPEL
vs.
CITY OF N. O. ET ALS. } No. 12598.

On motion of F. C. Zacharie, of counsel for The Board of Assessors for the Parish of Orleans, State of Louisiana, respondents herein, and upon suggesting to the court that these respondents by reason and on account of respondents during the past two months—being the period of assessment—being so constantly occupied with the discharge and performance of their public duties that they have been unable to supply their solicitor with the data and information necessary to properly prepare their defence and answer herein, and on further suggesting that they desire a delay of one month's time from the date of the filing hereof in which to plead and answer, it is ordered that a delay of one month be granted respondents in which to plead and answer herein.

Decree pro Confesso against City of N. O. Entered and Filed April 10, 1897.

U. S. Circuit Court, Eastern Dist. of La. In Equity.

MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS. } No. 12598.

On motion of E. Howard M'Caleb, Esqr., solicitor for complainant, and on showing to the court that The City of New Orleans, one of the defendants herein, has failed and neglected to plead or
20 answer to complainant's bill within the one month's delay to it granted by order of Feb'y 27th, 1897, herein rendered—

It is now ordered that a decree *pro confesso* be rendered and entered against said defendant, The City of New Orleans.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Decree pro Confesso against Board of Assessors. Entered and Filed April 10, 1897.

United States Circuit Court, Eastern Dist. of La.

MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

On motion of E. Howard McCaleb, Esqr., solicitor for complainant, and on suggesting to the court that The Board of Assessors for

the Parish of Orleans, one of the defendants herein, has failed to plead and answer within the delay of one (1) month to them granted by order of court bearing date March 6th, 1897—

It is now ordered that a decree *pro confesso* be entered against said defendant, The Board of Assessors for the Parish of Orleans.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Answer. Filed May 10, 1897.

U. S. Circuit Court. In Equity.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

To the honorable the judges of the United States circuit court for the fifth judicial circuit and eastern district of Louisiana:

21 The answer of The City of New Orleans, George B. Penrose, treasurer of said city of New Orleans, and The Board of Assessors for the Parish of Orleans, defendants herein, to the original bill of complaint of Mary G. T. Stempel, wife of Edward Stempel, guardian of the infants Fannie Tobin McCan, David Chambers McCan, Elizabeth McCan, and Charles Patterson McCan, complainants.

These defendants, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors and uncertainties and imperfections in the said bill contained, and not waiving, but specially reserving, their rights under the demurrer hereinbefore filed by these defendants herein, for answer to said bill, or to so much thereof as these defendants are advised it is material or necessary for them to make answer, answering, say:

(1.)

Defendants admit that the said Mary G. T. Stempel was duly appointed guardian of her minor children hereinbefore named by the honorable the supreme court of the county of Kings, State of New York, and that she duly qualified as such.

(2.)

Defendants admit that satisfactory evidence of said appointment as guardian aforesaid has been produced to the honorable the civil district court for the parish of Orleans, and that said court has authorized complainant, guardian, to sue and recover the property, rights, and credits belonging to said minors in this city, and to take possession of and remove the same out of this State; but defendants specially deny that complainants have removed the property and debts which then existed in this State outside of the State, but, on the contrary, defendants aver and declare that said debts and prop-

erty still existed and are in the State of Louisiana and in
22 this State, and were there at the time that the assessment of complainant was made.

(3.)

Defendants admit that in the matter of the successions of Hester C. and David McCan, Nos. 43186 and 39737 respectively of the docket of the civil district court for the parish of Orleans, the complainant and her wards and infants, the minors above named, were recognized sole legal heirs of said deceased and as such placed in possession of the property and estate of said deceased, and that said judgments are final and have been recorded in the conveyance office.

(4.)

Defendants admit that, beside the real estate inherited by said children from said decedents, they inherited and were placed in possession of a large amount of bonds and notes, but defendants declare that they do not know the amount thereof, and that they are unable to state whether or not the facts set forth in the fourth clause of complainant's bill of complaint are correct or not, and they demand same to be proven.

(5.)

Defendants admit that during the month of March, 1896, or thereabouts a demand was made upon the board of assessors for the annullment of the assessment on the assessment-rolls of the first municipal district and second representative district of this city in the name of "estate of D. C. McCan for money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, $15,000.00," and defendants admit that the said assessors declined to grant said petition; but defendants specially deny that said assessment was illegal, but, on the contrary, they assert and declare that said assessment was legal and valid, and the taxes levied there-
23 under are legal and valid, and defendants aver and declare that in declining to cancel said assessment the said board of assessors were but doing their full duty as imposed upon them by law.

(6.)

Defendants admit that between the 20th of March and 10th of April, 1896, complainants addressed a written communication to the city council renewing the request for the cancellation of said assessment, and defendants admit that the same was not granted by said council or any committee thereof, and defendants aver that in refusing to grant same the city council and its committees acted strictly in accordance with law, and the assessment was legal and valid, and the taxes levied thereunder are also legal and valid.

(7.)

Defendants The Board of Assessors say that they have no interest in answering the 7th clause of complainant's bill, as they have not

instituted any seizure proceedings. Defendants The City of New Orleans and George B. Penrose, treasurer, deny that their seizure or threatened seizure of the monies, etc., belonging to the estate of D. C. McCan for the payment of the aforesaid taxes levied under the said assessments were illegal or invalid, but, on the contrary, defendants aver that they were legal and valid, and their action therein was strictly in accordance with law.

(8.)

Defendants deny that the assessments aforesaid made by the board of assessors for the parish of Orleans are illegal, deny that the estate of D. C. McCan had ceased to exist at the time said assessment was made, and deny that the property assessed had been removed from the State or from the city of New Orleans at the time the said assessment was made.

(9.)

Defendants deny that said assessments were illegal and
24 void, and they now aver and the truth is that the said assessment entered on the roll of the board of assessors for the parish of Orleans on the estate of D. C. McCan on money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000, was made and levied upon taxable property, rights, and credits situated within the jurisdiction of said board of assessors and subject to taxation in the city of New Orleans, and said debts, credits, etc., are now and were at the time of making said assessment within the jurisdiction of the State of Louisiana and of the city of New Orleans and are taxable in said city and State.

(10.)

Defendants deny that the city of New Orleans attempted to collect any taxes upon any bonds or credits which are not taxable under the laws of the State and of the United States.

(11.)

Defendants declare that they have no knowledge of the truth or falsity of the allegations made by complainant in her bill as to whether or not she has given bond in the county of Kings, State of New York, to the extent of $800,000.00 for the faithful performance of her duties as guardian of the aforesaid minors, and defendants deny that they or any of them ever intended or ever will intend to make any illegal seizure or advertisement of any of the property belonging to said complainants, but, on the contrary, that if any seizures and sales of said property are made or threatened — is to satisfy legal taxes legally assessed.

(12.)

Defendants deny that complainants have paid unto the city of New Orleans and to the treasurer thereof, or tax collector of the State of Louisiana all the taxes due by complainant and the

minors aforesaid, and they aver that the full amount of taxes
25 claimed on the assessment-rolls and tax bills on file herein is still due, owing, and unpaid by complainants to the city of New Orleans.

(13.)

Defendants deny that they or any of them ever combined, colluded, and confederated together with fraudulent intent and design of harassing, injuring, and oppressing the infant wards of complainant for the purpose of dispoiling them of their property or of any part thereof, but they aver that in all that they did and in all that they threatened to do they were acting strictly in accordance with the law in enforcing a legal and valid assessment and endeavoring to collect a legal and valid tax.

(14.)

Defendants deny that complainant is or ever was entitled to invoke the equitable writ of injunction for the purpose of forbidding and prohibiting the city of New Orleans and George B. Penrose, treasurer, from seizing, advertising, and attempting to sell any of the property, rights, or credits belonging to the said complainant or to the estate of D. C. McCan for the satisfaction of the taxes due for 1896, on the assessment hereinbefore referred to.

Defendant- den*ies* that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for these defendants to make answer to and not herein and especially well and sufficiently answered, confessed, traversed, and avoided or denied; and *this* defendant-, considering the premises aforesaid, humbly pray this honorable court that the preliminary writ of injunction hereinbefore granted be set aside and annulled, and that the prayer for the perpetuation of said injunction be denied and rejected, and that all the demands contained in the bill of complaint of oratrix herein be rejected and dismissed, and defendants humbly pray to be hence dismissed with reasonable costs and charges in their behalf most wrongfully sustained, and de-
26 fendants pray for all special, equitable, and general relief and orders herein as this honorable court may deem just and proper herein.

Respectfully submitted.

(Signed) F. C. ZACHARIE,
SAM'L L. GILMORE, *City* —,
JAS. J. McLOUGHLIN,
Ass't City Att'y,
Solicitors for Defendants.

(Signed) W. C. FLOWER, *Mayor.*

Motion to Set Aside Judgment pro Confesso and Order. Entered and Filed May 11, 1897.

U. S. Cir. Court. In Equity.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS & AL. } No. 12598.

On motion of J. J. McLoughlin and F. C. Zacharie, solicitors for defendants, and upon suggesting the consent of solicitor for complainant:

It is ordered that the judgment *pro confesso* entered herein be set aside, and defendants be allowed to answer.

Order: Continuance.

Extract from the Minutes, June 12, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS. } No. 12598.

In this cause, counsel being present, it is ordered that the same be continued to Monday, June 21, 1897, at 11 a. m.

Order: Case Continued for the Term.

Extract from Minutes, Monday, June 21, 1897.

MARY G. T. STEMPEL
vs.
CITY OF N. O. ET ALS. } No. 12598.

27 In this cause it is ordered that said cause be continued for the term, counsel for defendant- being present and taking notice thereof.

Order Fixing Case. Entered and Filed December 1, 1897.

United States Circuit Court, Eastern District of La., 5th Circuit.
In Equity.

MRS. MARY G. T. STEMPLE
versus
CITY OF NEW ORLEANS ET ALS. } No. 12598.

On motion of E. Howard McCaleb, Esq., solicitor for complainant—

It is ordered — this cause be fixed for trial for Friday, the 10 day of December, 1897, at 11 o'clock a. m., and that James J. McLoughlin and F. C. Zacharie, solicitors for defendants, be notified hereof.

Order: Case Continued.

Extract from the Minutes, Dec'r 10, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS. } No. 12598.

By agreement of the counsel for the parties herein, it is ordered that this cause be continued to December 17, 1897, at 11 a. m.

Hearing of Cause, Note of Evidence, and Submission.

Extract from the Minutes.

November Term, 1897.

NEW ORLEANS, FRIDAY, *December* 17, 1897.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

28 MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS. } No. 12598.

This case came on to be heard upon the bill of complaint, exhibits, answer, replication, proofs, and testimony.

Present: E. Howard McCaleb, solicitor for the complainant; F. C. Zacharie, solicitor for board of assessors; J. J. McLoughlin, solicitor for city of N. O.

Whereupon counsel for the complainant offered the following evidence in her behalf, to wit:

1. Decree of supreme court of La., succession Hester Calloway M'Can, # 11793, dated Dec. 2nd, 1895.

2. Order authorizing guardian to take possession of and remove property from this State and affidavit of Eugene D'Herete, d'y cl'k, in suc'n Chas. P. M'Can, 1884, civil dist. court, parish Orleans.

3. Testimony Albert Baldwin.

4. Copy assessment-roll city N. O., sq. 19, No. 385, in the name est. D. C. M'Can, marked Exhibit "O."

5. Affidavit Arthur B. Leopold & exhibits.

6. Receipt for personal taxes est. D. C. M'Can, 1896.

7. Notices from treasurer city N. O., Exhibits "7," dated May 21, June 23, & Dec. 2d, 1896, & Jan'y 7th, 1897.

8. Four (4) bonds & undertakings given by Mary Tobin Stempel as guardian with American Surety Co. of N. Y. as surety in favor of the minors Fanny Tobin, Chas. Patterson, David Chambers, & Kate Elizabeth M'Can, each for $200,000.00, in the supreme court, Co. of Kings, State of N. Y., Exhibits "8."

9. Judgment of the civil district court for the parish of Orleans, succession of D. C. McCan, No. 59737, recognizing the minors McCan as the sole legal & forced heirs of D. C. McCan & putting them in

possession through their guardian (Mrs. Stempel) of the property of said deceased.

29 And the counsel for defendants offered their evidence, and the case was then argued by the solicitors for the respective parties and submitted; when the court took time to consider.

COMPLAINANT'S EVIDENCE.

Decree of Supreme Court of La., Succession of Hester Calloway McCan, # 11793, Dated Dec. 2nd, 1895.

Supreme Court of the State of Louisiana

CLERK'S OFFICE, NEW ORLEANS,
MONDAY, *December 2nd*, 1895.

Succession of HESTER CALLOWAY McCAN, on Petition of MARY TOBIN STEMPEL, Guardian of Her Minor Children. No. 11793.

Appeal from the civil district court for the parish of Orleans.

Mr. Justice Miller delivered the opinion and decree of the court in the words and figures following, to wit:

It is therefore ordered, adjudged, and decreed that the judgment of the lower court be avoided and reversed.

It is further ordered, adjudged, and decreed that the minors Fanny Tobin McCann, David Chambers McCann, Kate Elizabeth McCann, and Charles Patterson McCann be recognized as the legal heirs of Hester Calloway McCann, and as such, through their guardian, Mary Tobin Stempel, be, and they are, put in possession of the property of said deceased, Hester Calloway McCann; that the provision of the will of said deceased giving the possession, control, and administration of said property to Harry H. Hall

30 and David C. McCann be, and is hereby, decreed to be void and of no effect; that all questions not covered by this decree be reserved, and that appellees pay costs.

A true copy.

Clerk's office, New Orleans, January 18th, 1897.

[SEAL.] PAUL E. MORTIMER,
Deputy Clerk.

Order authorizing guardian to take possession of and remove property from this State and affidavit of Eugene D'Herete, d'y cl'k, in suc'n Chas. P. M'Can, 1884, civil dist. court, parish Orleans. Filed Dec. 17, 1897.

Civil Dist. Court, Parish of Orleans, "Div. D."

[Cancelled law stamp.]

Succession of CHARLES P. McCAN. No. 18811.

On motion of E. Howard McCaleb and Saunders, Miller, Smith & Hirsch, attorneys for Mrs. Mary T. Stempel, guardian of the minors Katie Elizabeth McCan, Fannie Tobin McCan, David Cham-

bers McCan, and Charles P. McCan, sole surviving issue of her marriage with her first husband, the said late Charles P. McCan;

And on showing to the court that according to the annexed affidavit and certificate from the clerk of this court public advertisements have been made in the New Orleans Picayune, the New Orleans Times Democrat, and the New Orleans Bee, in French and English, for the period of thirty days, as required by law, calling upon all persons having claims against said minors to show cause why said guardian should not be authorized to take possession of and remove from this State the property of said minors; that no opposition or objection has been filed thereto and no claims have been presented against the property or estate of said minors; that all the debts of said minors have been paid, and that no debts against them exist in this State—

31

The premises considered:

It is now ordered, adjudged, and decreed that Mrs. Mary T. Stempel, wife of Edward Stempel, residing in the city of Brooklyn, State of New York, in her capacity of guardian of said minors, Katie Elizabeth, Fannie Tobin, David Chambers, and Charles Patterson McCan, be, and she is hereby, authorized to take possession of and remove from this State all the movable property belonging to said minors.

N. O., January 23d, 1895.

(Signed) N. H. RIGHTOR, *Judge.*

A true copy.

[SEAL.] (Signed) F. E. PETERSON, *D'y Cl'k.*

Affidavit of D'y Cl'k. Filed Dec'r 17, 1897.

Civil Dist. Court for the Parish of Orleans, "Div. D."

[Cancelled law stamp.]

Succession of CHAS. P. McCAN. #18811.

Eugene D'Hérété, deputy clerk of this court, being duly sworn, says that the application of Mrs. Mary Tobin Stempel, of Brooklyn, Kings county, State of New York, mother and guardian of the minors Kate Elizabeth, Fannie Tobin, Charles Patterson, and David Chambers McCan, to take possession and remove from the State of Louisiana the property belonging to said minors has been published in the New Orleans Times-Democrat and N. O. Picayune on the 20, 24, & 31 of December, 1894, and 3d, 9th, & 14th of January, 1895, in the English language, and in the New Orleans Bee on the 19th, 24th, & 28th of Dec'ber, 1894, and 3d, 9th, 14th of January, 1895, in the French language, and that no opposition has been filed thereto.

32

X EUG. D'HÉRÉTÉ, *D'y Cl'k.*

Sworn to and subscribed before me this 23d January, 1895.

X P. A. DUCOING, *D'y Cl'k.*

A true copy.

[SEAL.] (Signed) F. E. PETERSON, *D'y Cl'k.*

EXHIBIT "3."

Testimony of Albert Baldwin for Complainant.

United States Circuit Court, Eastern District of Louisiana.

MARY G. T. STEMPLE
vs.
CITY OF NEW ORLEANS. } No. 12598.

Testimony taken in the above numbered and entitled cause on behalf of complainants on the 4th day of June, 1897, before Henry J. Carter, Esq., special examiner appointed under order of court, and reported by R. H. Carter, stenographer.

Appearances.

E. H. McCaleb, Esq., counsel for complainant.
J. J. McLoughlin, Esq., counsel for the city of New Orleans.
F. C. Zacharie, Esq., counsel for board of assessors.

33 ALBERT BALDWIN, witness sworn on behalf of complainant, testified as follows:

Direct examination.

By Mr. MCCALEB:

Q. Where do you reside?

A. In New Orleans.

Q. Are you acquainted with Mrs. M. G. T. Stemple, wife of Edward Stemple?

A. I am.

Q. Do you know her minor children by her first husband, Charles P. McCan, and what are their names?

A. Yes, sir; David Chambers is one, Charles Patterson is two, Fanny Tobin is three, and Kate Elizabeth is four—two girls and two boys.

Q. Mr. Baldwin, what property did Mrs. Stemple—what property, in so far as money advanced, money loaned, advances, and so on, cash on hand, bills receivable, and so on, did Mrs. Stemple as guardian acquire for her minor children as heirs of David C. and Hester Calloway McCan? State what the value of the—first, what these assets consist of.

A. The assets—if I understand the question, it is, What did the assets consist of that these minor children inherited from David C. and Hester——

Q. Yes, sir.

A. Largely real estate and securities, amounting in all to a valuation I should estimate at $800,000.

Q. What was the nature and character of the bills receivable that were turned over by the representative of the estate of D. C. McCan and Hester C. McCan to Mrs. Stemple?

A. They were largely mortgages.

34 Q. There is an assessment on the rolls of the 1st municipal and second representative district of the city of New Orleans of money loaned, notes, credits, all bills receivable for money loaned or advanced, and all credits of any or other description—$800,000—and of money in possession, deposited or in hand—$15,000—for the year 1896. What have you to say to that assessment?

A. They were not worth that amount of money; that would not be a proper valuation of those——

Q. Of what value were the notes and other obligations on which monies had been loaned?

A. I should roughly estimate—I should say $500,000.

Q. They consisted, you say——

A. Largely of mortgage notes——

Q. Notes secured by mortgage——

A. Bonds, stocks.

Q. What was done with these notes and in whose——

A. They were turned over to the Guarantee Company of New York—Fidelity and Trust Company.

Q. Is that the name of it? Is it not the American Surety Company?

A. I think it is the American Surety Company. It is the one that W. L. Trenholm used to be president—American Surety Company.

Q. Have these obligations been since in the possession of this American Surety Company?

A. They have.

Q. And under their control?

A. Yes, sir.

Q. Of this what amount, if any, was invested in premium bonds issued by the city of New Orleans?

A. There was about $120,000.

Q. And in consolidated bonds of the city of New Orleans?

35 A. $22,000.

Q. And in the bonds of the State of Louisiana known as Louisiana new consols and baby bonds?

A. $61,000. I guess more. Wait a moment. $80,000.

Q. $88,040.00?

A. Yes, sir.

Q. How much would be the aggregate of premium bonds, the consolidated bonds of the city of New Orleans, and the Louisiana consols and baby bonds?

A. About $230,000.

Q. Is this included in the $500,000 or exclusive of that?

A. It is inclusive.

Q. Have the taxes on the real estate for 1896 all been paid?

A. Yes, sir; and also the taxes on the personal property, household furniture.

Q. Is this American Surety Company on the bond of Mrs. Stemple as guardian?

A. Yes, sir.

Q. Do you know what amount of bond she had to give in New York?

A. I think it is $800,000, without being able—I think it is $800,000.

Q. Do you know whether or not she has to pay a commission to this company to be her surety on her bond as guardian?

A. Yes, sir.

Q. About how much is the annual commission?

A. It is very small, really. I think it is less than $1,000. There is a lawyer here who has charge of the court process and the surety—probably $1,000.

Q. And this surety company requires that these securities should be in their possession?

A. Yes, sir.

36 Q. Where is this American Surety Company domiciliated at?

A. New York city.

Q. And where is the domicile and residence of Mrs. Stemple and her minor children?

A. In New York, also.

Cross-examination.

By Mr. McLOUGHLIN:

Q. You are very familiar with all these details and this estate?

A. Quite so.

Q. What reason have you—what makes you so familiar—what is your relation to the estate?

A. Simply representing the guardian.

Q. You are the agent of the guardian?

A. Yes, sir.

Q. Holding her power of attorney?

A. Yes, sir.

Q. All of these mortgage notes—about how many of them are on property situated in this city?

A. I should say 80 per cent.

Q. 80 per cent. of how much?

A. Of the amount, whatever it is.

Q. What is the amount, about?

A. The inventory will show that.

Q. These notes that are on property in this city, where are they now; the notes themselves; not under whose control, but where are they?

A. Some of them have been paid; settled, so far as it is possible.

Q. But those that are not paid.

A. They are now in the hands of the surety company, agent of the surety company here.

Q. Where were they at the time this assessment was made,

37 which was from January to March, 1896?

A. I think they were still with the agent.

Q. With the agent of the company here?

A. Yes, sir.
Q. Who is the agent of the company here?
A. Mr. Palfrey.
Q. The cashier of the New Orleans national bank?
A. Yes, sir; appointed by the surety company.
Q. So these notes which belong to this estate are kept for convenience in the New Orleans national bank in the hands of Mr. Palfrey?
A. They are, largely.
Q. And collected by him?
A. With the assistance of others.
Q. When that money is collected is it deposited in the New Orleans national bank to the credit of this estate?
A. Yes, sir.

By Mr. ZACHARIE:

Q. You spoke about some premium bonds?
A. Yes, sir.
Q. What other bonds were there besides premium bonds?
A. I think there were consolidated, Louisiana fours, and some baby bonds; that we don't want to talk about.
Q. Where are these bonds?
A. Where are they?
Q. Yes.
A. Most of the premium bonds—they were all with the American Surety Company, but in the control of Mr. Palfrey as the agent of the American Surety Company.
Q. They are here in the city of New Orleans?
A. I presume—I have not seen them, but I presume they
38 are; I take it for granted; I don't know.
Q. Where were they between the first of January and first of March, 1896?
A. I think they were here; I think they were in the city.
Q. Mr. Palfrey, as the agent of the surety company, collects anything that falls due upon these bonds—interest or premium that may be drawn?
A. Oh, evidently he is the one; he represents them and collects them.

By Mr. MCLOUGHLIN:

Q. Did these bonds and mortgage notes ever go to New York physically—ever sent there?
A. Never, to my knowledge.
Q. Then, to the best of your knowledge and belief, they have always remained in this city?
A. Yes, sir.
Q. It was an apparent title or right of control?
A. Yes, sir. In other words, her application was made even before the decision of the court connecting—where Mr. Hall was connected; where Mr. Hall was. I think I went to New York; I knew the necessity of a bond. Their conditions were that all these prop-

erties--personal properties—should all be turned over to them. Then under those circumstances they would make a low rate for the bond; in other words, a bond. We will say it was six hundred or eight hundred thousand dollars. It was quite a large amount; ran close to a million. The rate would have amounted to many thousand dollars per annum, except that they had an agent and had possession of the securities. Under those circumstances we got a bond and a lawyer attended to the business there in the court. The rate amounted, I think, near a thousand dollars per annum.

39 Q. You say that all of *these* personal estate amounted to $800,000—that it is assessed to that?

A. I think it was. I mean to say that my valuation upon the estate—the whole of it—real estate and everything else, would be $800,000. If you desire me to go into a further explanation, because I have nothing to conceal, there was something like $75,000 of mortgages that appeared on the face to be worth dollar for dollar, and the loss in selling was some $36,000. Now, there were many things of that stripe. You may take the Gibbes Morgan mortgage——

Mr. ZACHARIE to stenographer: Don't put the details down.

A. I want to give you an idea of how I formed my estimate. The face of the inventory was over a million dollars, but, notwithstanding the face of the inventory was over a million, it was an inventory to make a commission on; probably it was thoroughly correct to put it over a million, but to take hold of the things and collect them—I found a mortgage that shows a loss where the property is given probably of 30 or 40 per cent. It is a remarkable thing, Mr. McLoughlin; you have had some experience. That was the situation.

Q. What is your valuation of the whole estate?

A. I should say the whole estate is worth $800,000.

Q. That includes real estate?

A. Yes, sir; and personal property.

Q. How much of that was personal; about how much?

A. I should say personal property, $500,000. I am really guessing. I say $500,000 or $300,000 offhand.

Q. Was all of that personal property given to the security company as security?

A. Yes, sir; everything.

40 Q. And they accepted this personal property as security for a bond of how much?

A. A very large bond. I don't know whether it was six hundred or eight hundred thousand dollars.

Q. Do you know how much deposit this surety company requires when a bond of this kind is given, how much in relation to the amount of the bond?

A. It is on the same basis if you come into a bank and want to get a loan at a low rate of interest; if you come in and offer Mr. McLoughlin as endorser you get it at 6 per cent.; if you come in

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

and get it on your own name probably seven per cent. would be the right rate. So it is with a guarantee company. The guarantee company, they made it so low, which they wouldn't do under any other circumstances.

Q. What I want to get at is this, Does not the surety company demand in New York city deposits in consideration of this low rate—a deposit equivalent to the value of the bond?

A. No.

Q. How close does it come?

A. They were willing to give the bond—there was talk—it was all done through the attorney, Mr. Whitford, in the Equitable building. Mr. Trenholm, him I know. I didn't come in contact, but he made the arrangement. Mr. Trenholm gave me to know that I had something to do with the change; possibly I did or did not; I don't know; all people are vain. I might have had influence in making the rate less, and then the bank he knew, and Mr. Palfrey accepting as agent, that was the whole—they had agents here notwithstanding, but they have nothing to do with it. Mr. Palfrey is a special agent for this special case.

Q. What I want to get at is this: What was the valuation of the personal property that was pledged to this surety company
41 as a collateral for the securing of this bond, what was the valuation of the security?

A. I think about $500,000 would be a fair estimate.

Q. Do you mean to say that this is the security company's estimate?

A. I take it for granted that it is.

Q. Of the personal property?

A. Yes, sir.

Q. That was pledged?

A. Yes, sir.

By consent of parties it is agreed that this case be fixed for hearing on the merits upon the testimony taken and such documentary evidence as the respective parties desire to offer before his honor Judge Don A. Pardee on Saturday, June 12th, at 11 o'clock a. m.

(Here follows assessment-roll, marked pp. 42 and 43.)

44 EXHIBIT "5."

Affidavit of Arthur B. Leopold & Exhibits.

Before me, the undersigned authority, personally came and appeared Arthur B. Leopold, who, being duly sworn, deposes and says:

That he is in the employ of E. Howard McCaleb, Esq., attorney-at-law; that on the 17th day of March, 1896, he delivered to Mr. Fendal Horn, the duly authorized secretary of the board of assessors for the city of New Orleans, an envelope containing an application in the form of a petition, with affidavit and grounds, to change assessments on real estate from estate of D. C. McCan to that of Mrs. Mary G. T. Stempel, guardian, and to cancel assessments of money

loaned, advanced cash on hand, bills receivable, etc., in the office of the board of assessors of the city of New Orleans, room 15, city hall, in the hands of said Fendal Horn; that said petition was accompanied by copies of two judgments rendered in the successions of D. C. McCan and Mrs. Hester C. McCan, the former by the civil district court for the parish of Orleans and the latter by the supreme court of the State of Louisiana, sending the minors, Fanny Tobin McCan, Kate Elizabeth McCan, David Chambers McCan, and Charles Patterson McCan, into possession of the property belonging to said successions, through their guardian, Mrs. Mary G. T. Stempel; that the annexed application, marked "A," is a duplicate copy of said application so delivered by affiant to Fendal Horn, secretary of the board of assessors aforesaid.

That subsequently, on the 9th day of April, 1896, at the request of E. Howard McCaleb, he delivered to the clerk of the committee on assessments of the city council of New Orleans a petition of Mrs. Mary G. T. Stempel, guardian, renewing the said application
45 for the cancellation of assessments on money loaned, advanced, etc., $800,000, and cash on hand, bills receivable, etc., $15,000, a copy of which is hereto annexed, marked Exhibit "B."

(Signed) ARTHUR B. LEOPOLD.

Sworn to and subscribed before me this 16th day of January, A. D. 1897.

[SEAL.] (Signed) F. J. DREYFOUS,
Notary Public.

EXHIBIT "A" (Attached to Affidavit).

NEW ORLEANS, LA., *March 17th*, 1896.

To the board of assessors for the parish of Orleans.

GENTLEMEN: The petition of Mrs. Mary G. T. Stempel, wife of Edward Stempel and guardian of her minor children, Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, all residing in the State of New York, respectfully shows:

That your petitioner and her above-named minor children all reside in the State of New York.

That on the 20th day of November, 1894, your petitioner was duly appointed and qualified as guardian of her above-named minor children by the honorable the supreme court of the county of Kings, State of New York.

That subsequently she produced satisfactory evidence of her appointment, as aforesaid, to the honorable the civil district court for the parish of Orleans, division "D," and was authorized to sue for and recover the property, rights, or credits belonging to said minors in this State and to take possession of and remove their property from this State, after furnishing satisfactory proof to the
46 court that no debts exist in this State, all of which will more fully appear by the records in the succession of Charles Pat-

terson McCan, No. 18811 of the docket of the civil district court, division "D."

That your petitioner instituted suit in the successions of Hester Calloway McCan and David C. McCan, Nos. 43186 and 39737 of the docket of the civil district court for the parish of Orleans, and said minors were recognized as the sole forced heirs of said Hester Calloway McCan and David C. McCan, and as such, through your petitioner, their guardian, put in possession of the property of said deceased.

That your petitioner has caused said judgments to be duly recorded in the conveyance office of the parish of Orleans, all of which will more fully appear by duly certified copies of said judgments, herewith filed for greater certainty and marked "A" & "B."

That your petitioner desires to have the real estate situated in this city and heretofore assessed in the name of the estate of David C. McCan entered upon the rolls and assessed in her name, as the guardian of the minor children above named, which real estate is described as follows upon the assessment-rolls of this city, to wit:

Square No. 7, first municipal district, bounded by Foulton, Notre Dame, Front, & Julia streets.

Lot No. 10, square 139, bounded by Constance, Gaiennie, Magazine, & Erato, in the first municipal district.

Square No. 6, in the first municipal district, bounded by Foulton, Front, Notre Dame, and Girod streets.

Square 139, in the first municipal district, bounded by Gaiennie, Constance, Magazine, and Erato streets.

Square 199, in the fourth municipal district, bounded by
47 Third, Coliseum, Prytania, and Second streets.

Square 201, in the fourth municipal district, bounded by Coliseum, Prytania, Philip, and First streets.

Square 172, in the fourth municipal district, bounded by Ches-nut, St. Andrew, Josephine, and Coliseum streets.

That there appears upon the assessment-rolls of the first minicipal and 2nd representative district of this city, in the name of the estate of David C. McCan, on moneys loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000.00.

That said assessment, as aforesaid, should be cancelled, annulled, and set aside upon the following grounds and for the following reasons, to wit:

That your petitioner's minor children aforesaid, who have been sent into possession of the property of said David C. McCan, and to whom the same belongs, as well as your petitioner, are residents and citizens of the State of New York.

That in the case of the State Tax on Foreign-held Bonds (15 Wallace, U. S., 300) it was held that "the power of taxation is limited to persons, property, and business within her jurisdiction."

Again, in Murray *vs.* Charleston, 96 U. S., 432, it was held that "debts are not property. A non-resident creditor of a city cannot be held to be, in virtue of a debt which it owes him, a holder of property within its limits."

In Kirtland *v.* Hotchkiss, 100 U. S., 491, it was again held that

" for the purpose of taxation a debt has its situs at the residence of the creditor and may be there taxed."

The same doctrine has been frequently recognized by the supreme court of the State of Louisiana.

In V. & A. Meyer & Co. *v.* Sheriff, 41 Ann., 645, it was held that " debts have their situs at the domicile of the creditor. Being located at the domicil of the creditor, a debt is not assessable
48 or taxable elsewhere."

And in Paving Co. *v.* City, 41 An., 1015, it was held that " debts and other incorporeal rights when treated as property for the purpose of taxation can be assessed only at the domicil or place of residence of the creditor, without regard to the domicil of the debtor. Hence debts due to a foreign corporation by residents of this State cannot be taxed in this State."

And in Liverpool & London & Globe Insurance Company *vs.* Board of Assessors, 44 Ann., 760, it was held that " a non-resident creditor of a State cannot be said to be, in virtue of a debt which a resident owes him, a holder of property within its limits. The credit is not within the State's jurisdiction, and of no value to the debtor, and is not property within the State, but property of the creditor, taxable at his place of residence.

" Tangible movable property may be taxed where situate under a special statute which provides for its taxation."

And in Railey *v.* Board of Assessors, 44 A., 765, it was held that " if a right be incorporeal and intangible, such as a debt, which is not the property of the debtor in any sence, being his obligation and having value only in the hands of the creditor, its situs is necessarily where it is owned and not where it is due."

And in Clason *v.* City of New Orleans, 46 A., 1, the supreme court has recently decided that " moneys standing to the credit of a non-resident firm on the books of a New Orleans bank are not taxable. The relations between a bank and its customers are those of a creditor and debtor. The moneys are not specially deposited to be identically restored. They go into the mass of the bank's money with the understanding that they might be used and should be the basis of items of a debit and credit account. Such a debt is not distinguishable from those due to the foreign firm from any
49 other cause."

For these reasons your petitioner complains and says that the aforesaid assessment in the name of the estate of D. C. McCan on moneys loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000.00, is illegal and should be set aside, cancelled, and annulled.

Wherefore petitioner prays that the aforesaid assessment upon real estate or immovable property above described in the name of the estate of D. C. McCan, situated in the city of New Orleans, be changed to and assessed in the name of Mrs. M. G. T. Stempel, guardian of her minor children above named, and that the assessment on moneys loaned, advancements, $800,000.00, and cash on hand, bills receivable, etc., $15,000.00, be erased, cancelled, and stricken from the rolls as illegal and erroneous.

And petitioner prays for all general and equitable relief.

(Signed) E. HOWARD M'CALEB,
Attorney for Petitioner.

Albert Baldwin, *who*, after first being duly sworn, deposes and says:

That he is the agent and attorney-in-fact of Mrs. Mary G. T. Stempel, guardian of her minor children named in the foreign petition; that all the facts and allegations stated in the foregoing petition are true and correct to the best of his knowledge and belief.

(Signed) A. BALDWIN.

Sworn to and subscribed before me this 17th day of March, A. D. 1896.

(Signed) CHAS. T. SONIAT, *Not. Pub.*

50 EXHIBIT "B" (Attached to Affidavit).

NEW ORLEANS, *April 9th*, 1896.

To the honorable committee on assessments of the city council of New Orleans.

GENTLEMEN: The petition of Mrs. Mary G. T. Stempel, wife of Edward Stempel and guardian of her minor children, Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, all residing in the State of New York, respectfully shows that on or about the 17th day of March, 1896, she filed with the board of assessors of the parish of Orleans her petition praying that the assessment upon real estate or immovable property mentioned in said petition and fully described therein in the name of the estate of D. C. McCan, situated in the city of New Orleans, be changed to and assessed in the name of Mrs. Mary G. T. Stempel, guardian of her minor children above named, and she also prayed that the assessment on moneys loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $150,000.00, be erased, cancelled, and stricken from the rolls as illegal and erroneous.

That said board of assessors have neglected and failed to comply with her petition.

She now reiterates and reavers all the facts and allegations therein contained.

Wherefore she prays that the committee on assessments of the city council of New Orleans do grant the prayer of said petition, and that the assessment upon real estate or immovable property mentioned in said petition and assessed in the name of the estate of D. C. McCan, situated in the city of New Orleans, be changed

51 to and assessed in the name of your petitioner, Mrs. Mary G. T. Stempel, guardian of her minor children above named, and that the assessment on moneys loaned, advanced, etc., and on cash on hand, bills receivable, etc., be erased, cancelled, and stricken from the rolls as illegal and erroneous, and she makes said petition a part of this her application.

(Signed) E. HOWARD M'CALEB,
Attorney for Petitioner.

Receipt for Personal Taxes Est. D. C. M'Can, 1896. Offered and Filed Dec. 17, 1897.

No. 385, Bis.—City of New Orleans—Tax of 1896—On personal property.

Received June 4, 1896, of est. D. C. McCan fifty $\frac{00}{100}$ dollars for tax as described below:

Assessment.		For what purpose.		Amount.
Horses, cows, etc		City alimony	10 mills.	
Vehicles				
Merchandise or stock in trade				
Money at interest, credits, bills receivable				
Money in possession				
Shares of stock				
Furniture, etc	1,500	Interest and redemption, city bonds, under sec. 7, of act 110 of 1890	10 "	
Statuary, paintings, etc	500			
Diamonds, jewelry, etc	500			
Stock or interest in water craft				
Trackage, etc., of railroads				
Machinery and all motive power				
Judgments, suits, and causes in action				
Franchises, patents, copyrights, trade-marks, privileges, and charters, all canals and other ways of communication				
Bonds of all kinds				
Total taxable personal property	2,500	Total rate of tax	20 mills.	$50 00

JNO. F. BUTTS, *For Comptroller.* CH'S COUTURIE, *For Treasurer.*

[Written across the face:] Paid by Alb. Baldwin, att'y-in-fact for Mrs. M. G. T. Stempel, guardian. CH'S COUTURIE, *Tax Rec.*

As-essm't district.	No. of square.	Where situated.	Amount.
12	199	G. Coliseum & Third Res	

53 EXHIBITS "7."—Notices from Treasurer City N. O., Dated May 21, June 23, & Dec. 2nd, 1896, & Jan'y 7th, 1897.

Office of treasurer city of New Orleans, room No. 2, city hall.

NEW ORLEANS, *Jan. 7th*, 1897.

M Estate D. C. McCan, 747 Fulton —, c. o. E. Howard McCaleb, Sr.

DEAR SIR: You have been notified officially that I must proceed according to law to enforce collection of delinquent city taxes on personal property for the year 1896 assessed to you on credits, etc., $800000; money, etc., $1,500.00, in square No. 3, 19 assessment district, but, from courtesy and to avoid further expense and the annoyance of seizure and advertisement or rule in court to produce property, I call your attention to the necessity for immediate settlement.

The amount due is stated below.

Very respectfully, GEO. B. PENROSE, *Treasurer.*

1896.	Taxes	$16,300.
	Interest	923.66
	Total	$17,223.66
189–.		
189–.		
	Costs	.55
	Grand total	$17,224.21

Office of treasurer of the city of New Orleans, room No. 2, city hall.

54 NEW ORLEANS, *Dec. 2nd*, 1896.

M. Est. D. C. McCan, 747 Fulton St.:

You are hereby notified to deliver up to me, in my capacity as treasurer of the city of New Orleans, your accounts for "money loaned on interest, all credits and bills receivable for money loaned or advanced," and cash liable for city taxes, aggregating $16,300.00, assessed against *it* for years 1896, as set forth more fully in accompanying demand and notice of seizure, or as much thereof as may be necessary to realize at public sale the amount of the said taxes, with interest and costs, the total sum due being $16,948.02.

(Signed) JNO. W. WATSON,
Treasurer City of New Orleans ad Interim.

Office of treasurer of city of New Orleans, room No. 2, city hall.

NEW ORLEANS, *Dec. 2nd*, 1896.

Est D. C. McCan, 747 Fulton St.

SIR: You are delinquent for taxes on movable property due the city of New Orleans for the years mentioned below. You are hereby notified to come forward within three days from date of service of this notice and pay the same, in default of which I will proceed to seize and take into my possession so much of said movable property

as may be requisite to pay the said taxes, with interest and costs, or place a keeper upon the same preparatory to advertisement and sale, or take such other steps against other property or assets
55 you may have as may be necessary to collect the said taxes, etc., by virtue of the authority vested in me by the constitution and laws of the State of Louisiana and of the ordinances of the city of New Orleans.

Assessments on the rolls, 3 assessment district, square No. 19.

1896.	Money at interest, credits, etc.....	$800,000.00
	Money in possession....	1,500.00
189–.	....	
189–.	....	
1896, bill No. 385; 189–, bill No. —; 189–, bill No. —.		
1896.	... .	$16,300.00
		647.47
		$16,947.47
189–.	... .	
189–.	....	
	Costs.....	.55
	Grand total.....	$16,948.02

Respectfully,
(Signed) JNO. W. WATSON,
Treasurer of the City of New Orleans ad Interim.

(Printed in black ink in left-hand margin of page:) Bring this notice with you.

Bill No. 385.

City attorney's office, room 21, city hall.

Personal taxes.

NEW ORLEANS, *June* 23, 1896.

M Est. D. C. McCann, 747 Fulton St.

DEAR SIR: You are reported to this office as being delin-
56 quent for your personal tax for the year 1896, amounting to $16,350, with interest, at the rate of ten per cent per annum, from June 22d, 1896.

Under ordinance 5124, C. S., it is made the duty of this office to publish a list of delinquent tax debtors in the newspapers for ten consecutive days, and your name will be published in that list unless the tax due by you is paid immediately.

So soon as the publication of said list is made you will be legally notified of your delinquency, seizure of your property will follow, and additional costs and trouble will be thus incurred.

I beg that you will at once call at the office of the city treasurer,

room No. 2, city hall, entrance on Lafayette street, and pay the amount due to the city by you.

Very respectfully,

W. B. SOMMERVILLE,
Assistant District Attorney.

Postal card (attached) addressed to "Est. D. C. McCan, 747 Fulton —, city."

Bill No. 385.

Office of treasurer city of New Orleans—Euclid Borland, treasurer.

NEW ORLEANS, *May 21st*, 1896.

DEAR SIR: The tax assessed against you on personal property for the year 1896, to amount of $16,350.00, will become delinquent on June 22d, 1896, from which time 10 % per annum interest will be due.

It becomes my duty under the law to enforce collections. I beg that you will call at this office at once and settle, avoiding further expense.

EUCLID BORLAND, *Treasurer.*

Bring this notice with you.

57 EXHIBITS "8."—Four (4) bonds & undertakings given by Mary Tobin Stempel, as guardian, with American Surety Co. of N. Y. as surety, in favor of the minors, Fanny Tobin, Chas. Patterson, David Chambers, & Kate Elizabeth M'Can, each for $200,000.00, in the supreme court, Co. of Kings, State of N. Y.

Bond in Favor of Kate Elizabeth McCan.

The People of the State of New York, by the grace of God free and independent, to all to whom these presents may come, Greeting:

Know ye that we have inspected the files and records in the office of the clerk of the county of Kings, at the city of Brooklyn, [SEAL.] in said county; do find a certain undertaking remaining there on file of records in the words and figures following, to wit:

Know all men by these presents that we, Mary Tobin Stempel, of Mt. Vernon, N. Y., general guardian of the estate of Kate Elizabeth McCan, a minor, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto the said Kate Elizabeth McCan, the minor aforesaid, in the sum of two hundred thousand dollars ($200,000), lawful money of the United States of America, to be paid to the said Kate Elizabeth McCan, her heirs, executors, administrators, or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

58 Sealed with our seals and dated the 28th day of February, 1896.

Whereas the above-named Kate Elizabeth McCan is entitled to a

certain distributive share of the estate of Hester Calloway McCan; and

Whereas the said Kate Elizabeth McCan is a minor, and the said Mary Tobin Stempel has been duly appointed by the supreme court of the State of New York, county of Kings, general guardian of the estate of the said minor;

Whereas, by an order of said supreme court made the 28th day of February, 1896, the distributive share of the estate of Hester Calloway McCan and the income of the real estate belonging to the said minor, Kate Elizabeth McCan, and payable to the said minor, was directed to be paid to the above-named Mary Tobin Stempel, general guardian of the said minor, upon her tendering to the said court the bond in the said order required, conditioned as therein set forth:

Now, therefore, the condition of this obligation is such that if the above-bounden Mary Tobin Stempel shall and will faithfully apply said distributive share and render a just and true account of the application thereof in all respects to any court having cognizance thereof when thereunto required, then this obligation to be void; otherwise to remain in full force and virtue.

MARY TOBIN STEMPEL. [L. S.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By DAVID B. SICKELS,
2nd Vice-President.
SAMUEL S. PERRY, *Attorney.*

Signed, sealed, and delivered in the presence of—
L. E. CARMAN.

59 STATE OF NEW YORK, }
County of New York, } *ss:*

On this 28th day of February, 1896, before me personally appeared Mary Tobin Stempel, general guardian of the person and estate of Kate Elizabeth McCan, a minor, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Richmond Co.'s.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 28th day of February, 1896, before me personally appeared David B. Sickels, 2nd vice-president of the American Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the 2nd vice-president of the American Surety Company of New York; that he knew the corporate seal of said

company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of trustees of said company, and that he signed said instrument as 2nd vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said David B. Sickels further said that he was acquainted with Samuel S. Perry, and knew him to be one of the attorneys of said company; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry, and was thereto subscribed by the like order of the said board of trustees and in the pres-
60 ence of him, the said David B. Sickels, 2nd vice-president.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Rockland Co.'s.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be, and they hereby are, and each of them is authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for — on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed, such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

CITY AND COUNTY OF NEW YORK, *ss*:

—, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolutions with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 28th day of February, 1896.

SAMUEL S. PERRY, *Attorney.*

O K. R.

Endorsed: Approved Feb'y 28, 1896. N. H. Clement, J. S. C. Filed & rec. Feb'y 28, 1896.

Endorsed: N. Y. supreme court. In the matter of Kate Elizabeth McCann. Undertaking Feb'y 28, 1896. Approved Feb'y 28, 1896. N. H. Clement, J. S. C. Alexander & Green, att'ys, 120 Broadway. Filed & rec. Feb'y 28, 1896.

61 All which we have caused by these presents to be exemplified and the seal of our said court for said county to be hereunto fixed.

Witness Hon. William W. Goodrich, presiding justice of our supreme court in and for the second judicial department of said State, this 8th day of June, 1897, and in the 121st year of the Independence of the United States.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

I, William W. Goodrich, presiding justice of the supreme court of the State of New York in and for the second judicial department thereof, do hereby certify that Jacob Worth, whose name is subscribed to the preceding exemplification, is the clerk of the county of Kings and clerk of the supreme court in and for said county, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to said exemplification is the proper seal of said court for said county, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand, at the city of Brooklyn this 8th day of June, in the year 1897.

[SEAL.] (Signed) WM. W. GOODRICH,
Presiding Justice of the Supreme Court of the State of New York in and for the Second Judicial Department.

(Signed) JACOB WORTH, *Clerk.*

STATE OF NEW YORK, *County of Kings,* } *ss.:*

I, Jacob Worth, clerk of the county of Kings and also clerk of the supreme court of said county in and for the second judicial department of said State (said court being a court of record), do hereby certify that Hon. William W. Goodrich, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the second judicial department, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 8th day of June, in the year 1897.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

62 *Bond in Favor of Fannie Tobin McCan.*

The People of the State of New York, by the grace of God free and independent, to all to whom these presents may come, Greeting:

Know ye that we have inspected the files and records in the office of the clerk of the county of Kings, at the city of Brooklyn, [SEAL.] in said county; do find a certain undertaking remaining there on file of records in the words and figures following, to wit:

Know all men by these presents that we, Mary Tobin Stempel, of

Mt. Vernon, N. Y., general guardian of the estate of Fannie Tobin McCan, a minor, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto the said Fannie Tobin McCan, the minor aforesaid, in the sum of two hundred thousand dollars ($200,000), lawful money of the United States of America, to be paid to the said Fannie Tobin McCan, her heirs, executors, administrators, or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

63 Sealed with our seals and dated the 28th day of February, 1896.

Whereas the above-named Fannie Tobin McCan is entitled to a certain distributive share of the estate of Hester Calloway McCan; and

Whereas the said Fannie Tobin McCan is a minor and the said Mary Tobin Stempel has been duly appointed by the supreme court of the State of New York, county of Kings, general guardian of the estate of the said minor;

Whereas by an order of said supreme court made the 28th day of February, 1896, the distributive share of the estate of Hester Calloway McCan and the income of the real estate belonging to the said minor, Fannie Tobin McCan, and payable to the said minor, was directed to be paid to the above-named Mary Tobin Stempel, general guardian of the said minor, upon her tendering to the said court the bond in the said order required, conditioned as therein set forth:

Now, therefore, the condition of this obligation is such that if the above-bounden Mary Tobin Stempel shall and will faithfully apply said distributive share and render a just and true account of the application thereof in all respects to any court having cognizance thereof when thereunto required, then this obligation to be void; otherwise to remain in full force and virtue.

MARY TOBIN STEMPEL. [L. S.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By DAVID B. SICKELS,
2nd Vice-President.
SAMUEL S. PERRY, *Attorney.*

Signed, sealed, and delivered in the presence of—
L. E. CARMAN.

64 STATE OF NEW YORK, } ss:
County of New York, }

On this 28th day of February, 1896, before me personally appeared Mary Tobin Stempel, general guardian of the person and estate of Fannie Tobin McCan, a minor, to me known and known to me to be the individual described in and who executed the foregoing in-

strument, and she duly acknowledged to me that she executed the same.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Richmond Co.'s.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 28th day of February, 1896, before me personally appeared David B. Sickels, 2nd vice-president of the American Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the 2nd vice-president of the American Surety Company of New York; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of trustees of said company, and that he signed said instrument as 2nd vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said David B. Sickels further said that he was acquainted with Samuel S. Perry and knew him to be one of the attorneys of said company; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry and was thereto subscribed by the like order of the said board of trustees and in the pres-
65 ence of him, the said David B. Sickels, 2nd vice-president.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Rockland Co.'s.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be, and they hereby are and each of them is, authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for — on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

CITY AND COUNTY OF NEW YORK, *ss:*

—, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolutions with the orig-

inal thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 28th day of February, 1896.

SAMUEL S. PERRY, *Attorney.*

O K. R.

Endorsed: Approved Feb'y 28, 1896. N. H. Clement, J. S. C. Filed & rec. Feb'y 28, 1896.

66 All which we have caused by these presents to be exemplified and the seal of our said court for said county to be hereunto fixed.

Witness Hon. William W. Goodrich, presiding justice of our supreme court in and for the second judicial department of said State, this 8th day of June, 1897, and in the 121st year of the Independence of the United States.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

I, William W. Goodrich, presiding justice of the supreme court of the State of New York in and for the second judicial department thereof, do hereby certify that Jacob Worth, whose name is subscribed to the preceding exemplification, is the clerk of the county of Kings and clerk of the supreme court in and for said county, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to said exemplification is the proper seal of said court for said county, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand, at the city of Brooklyn, this 8th day of June, in the year 1897.

[SEAL.] (Signed) WM. W. GOODRICH,
Presiding Justice of the Supreme Court of the State of New York in and for the Second Judicial Department.

(Signed) JACOB WORTH, *Clerk.*

STATE OF NEW YORK, } ss.:
County of Kings, }

I, Jacob Worth, clerk of the county of Kings, and also clerk of the supreme court of said county in and for the second judicial department of said State (said court being a court of record), do hereby certify that Hon. William W. Goodrich, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the second judicial department, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 8th day of June, in the year 1897.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

67 *Bond in Favor of Charles Patterson McCan.*

The People of the State of New York, by the grace of God free and independent, to all to whom these presents may come, Greeting:

Know ye that we have inspected the files and records in the office of the clerk of the county of Kings, at the city of [SEAL.] Brooklyn, in said county; do find a certain undertaking remaining there on file of record in the words and figures following, to wit:

Know all men by these presents that we, Mary Tobin Stempel, of Mt. Vernon, N. Y., general guardian of the estate of Charles Patterson McCan, a minor, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto the said Charles Patterson McCan, the minor aforesaid, in the sum of two hundred thousand dollars ($200,000), lawful money of the United States of America, to be paid to the said Charles Patterson McCan, *her* heirs, executors, administrators, or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of February, 1896.

Whereas the above-named Charles Patterson McCan is entitled to a certain distributive share of the estate of Hester Calloway McCan; and

Whereas the said Charles Patterson McCan is a minor, and the said Mary Tobin Stempel has been duly appointed by the supreme court of the State of New York, county of Kings, general guardian of the estate of the said minor;

68 Whereas by an order of said supreme court made the 28th day of February, 1896, the distributive share of the estate of Hester Calloway McCan and the income of the real estate belonging to the said minor, Charles Patterson McCan, and payable to the said minor was directed to be paid to the above-named Mary Tobin Stempel, general guardian of the said minor, upon her tendering to the said court the bond in the said order required, conditioned as therein set forth;

Now, therefore, the condition of this obligation is such that if the above-bounden Mary Tobin Stempel shall and will faithfully apply said distributive share and render a just and true account of the application thereof in all respects to any court having cognizance thereof when thereunto required, then this obligation to be void; otherwise to remain in full force and virtue.

MARY TOBIN STEMPEL. [L. S.]
AMERICAN SURETY COMPANY OF NEW YORK,
By DAVID B. SICKELS, 2*nd* — *President.*
SAMUEL S. PERRY, *Attorney.*

Signed, sealed, and delivered in the presence of—
L. E. CARMAN.

STATE OF NEW YORK, }
County of New York, } *ss:*

On this 28th day of February, 1896, before me personally appeared Mary Tobin Stempel, general guardian of the person and estate of Charles Patterson McCan, a minor, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

L. E. CARMAN,
69 *Notary Public No.* 19, *New York County.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Richmond Co.'s.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 28th day of February, 1896, before me personally appeared David B. Sickels, 2nd vice-president of the American Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the — vice-president of the American Surety Company of New York; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of trustees of said company, and that he signed said instrument as — vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said H. D. Lyman further said that he was acquainted with Samuel S. Perry, and knew him to be one of the attorneys of said company; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry, and was thereto subscribed by the like order of the said board of trustees and in the presence of him, the said H. D. Lyman, vice-president.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Rockland Co.'s.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice presidents be, and
70 they hereby are and each of them is, authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for — on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings required or permitted in all actions or pro-

ceedings by law allowed, such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

CITY AND COUNTY OF NEW YORK, *ss:*

—, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolutions with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 28th day of February, 1896.

SAMUEL S. PERRY, *Attorney.*

M.

Endorsed: Approved Feb'y 28, 1896. N. H. Clement, J. S. C. Filed & rec. Feb'y 28, 1896.

All which we have caused by these presents to be exemplified and the seal of our said court for said county to be hereunto fixed.

Witness Hon. William W. Goodrich, presiding justice of our supreme court in and for the second judicial department of said State, this 8th day of June, 1897, and in the 121st year of the Independence of the United States.

71 [SEAL.] (Signed) JACOB WORTH, *Clerk.*

I, William W. Goodrich, presiding justice of the supreme court of the State of New York in and for the second judicial department thereof, do hereby certify that Jacob Worth, whose name is subscribed to the preceding exemplification, is the clerk of the county of Kings and clerk of the supreme court in and for said county, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to said exemplification is the proper seal of said court for said county, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand, at the city of Brooklyn, this 8th day of June, in the year 1897.

(Signed) WM. W. GOODRICH,
Presiding Justice of the Supreme Court of the State of New York in and for the Second Judicial Department.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

STATE OF NEW YORK, *County of Kings,* } *ss:*

I, Jacob Worth, clerk of the county of Kings, and also clerk of the supreme court of said county in and for the second judicial department of said State (said court being a court of record), do hereby certify that Hon. William W. Goodrich, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the second judicial department, duly elected

and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 8th day of June, in the year 1897.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

72 *Bond in Favor of David Chambers McCan.*

The People of the State of New York, by the grace of God free and independent, to all to whom these presents may come, Greeting:

[SEAL.] Know ye that we have inspected the files and records in the office of the clerk of the county of Kings, at the city of Brooklyn, in said county; do find a certain undertaking remaining there on file of record in the words and figures following, to wit:

Know all men by these presents that we, Mary Tobin Stempel, of Mt. Vernon, N. Y., general guardian of the estate of David Chambers McCan, a minor, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto the said David Chambers McCan, the minor aforesaid, in the sum of two hundred thousand dollars ($200,000), lawful money of the United States of America, to be paid to the said David Chambers McCan, *her* heirs, executors, administrators, or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of February, 1896.

Whereas the above-named David Chambers McCan is entitled to a certain distributive share of the estate of Hester Calloway McCan; and

Whereas the said David Chambers McCan is a minor and the said Mary Tobin Stempel has been duly appointed by the supreme court of the State of New York, county of Kings, general guardian of the estate of the said minor;

73 Whereas by an order of said supreme court, made the 28 day of February, 1896, the distributive share of the estate of Hester Calloway McCan and the income of the real estate belonging to the said minor, David Chambers McCan, and payable to the said minor, was directed to be paid to the above-named Mary Tobin Stempel, general guardian of the said minor, upon her tendering to the said court the bond in the said order required, conditioned as therein set forth:

Now, therefore, the condition of this obligation is such that if the above-bounden Mary Tobin Stempel shall and will faithfully apply said distributive share and render a just and true account of the application thereof in all respects to any court having cognizance

thereof when thereunto required, then this obligation to be void; otherwise to remain in full force and virtue.

MARY TOBIN STEMPEL. [L. S.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By DAVID B. SICKELS, *2nd Vice-President.*
SAMUEL S. PERRY, *Attorney.*

Signed, sealed, and delivered in the presence of—
L. E. CARMAN.

STATE OF NEW YORK, }
County of New York, } *ss:*

On this 28th day of Febuary, 1896, before me personally appeared Mary Tobin Stempel, general guardian of the person and estate of David Chambers McCan, a minor, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

L. E. CARMAN,
74 *Notary Public No.* 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Richmond Co's.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 28th day of February, 1896, before me personally appeared David B. Sickels, 2nd vice-president of the American Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the 2nd vice-president of the American Surety Company of New York; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of trustees of said company, and that he signed said instrument as 2nd vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said David B. Sickels further said that he was acquainted with Samuel S. Perry and knew him to be one of the attorneys of said company; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry, and was thereto subscribed by the like order of the said board of trustees and in the presence of him, the said David B. Sickels, vice-president.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Rockland Co's.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be, and
75 they hereby are and each of them is, authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for — on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

CITY AND COUNTY OF NEW YORK, *ss:*

—, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolutions with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 28th day of February, 1896.

SAMUEL S. PERRY, *Attorney.*

O K. R.

Endorsed: Approved Feb'y 28, 1896. N. H. Clement, J. S. C. Filed & rec. Feb'y 28, 1896.

All which we have caused by these presents to be exemplified and the seal of our said court for said county to be hereunto -fixed.

Witness Hon. William W. Goodrich, presiding justice of our supreme court in and for the second judicial department of said State, this 8th day of June, 1897, and in the 121st year of the Independence of the United States.

76 [SEAL.] (Signed) JACOB WORTH, *Clerk.*

I, William W. Goodrich, presiding justice of the supreme court of the State of New York in and for the second judicial department thereof, do hereby certify that Jacob Worth, whose name is subscribed to the preceding exemplification, is the clerk of the county of Kings and clerk of the supreme court in and for said county, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to said exemplification is the proper seal of said court for said county, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand, at the city of Brooklyn, this 8th day of June, in the year 1897.

(Signed) WM. W. GOODRICH,
Presiding Justice of the Supreme Court of the State of New York in and for the Second Judicial Department.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

STATE OF NEW YORK, } ss:
County of Kings, }

I, Jacob Worth, clerk of the county of Kings and also clerk of the supreme court of said county in and for the second judicial department of said State (said court being a court of record), do hereby certify that Hon. William W. Goodrich, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the second judicial department, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 8th day of June, in the year 1897.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

77 Judgment of the civil district court for the parish of Orleans, succession of D. C. McCan, No. 39737, recognizing the minors McCan as the sole legal forced heirs of D. C. McCan and putting them in possession, through their guardian (Mrs. Stempel) of the property of said deceased. Filed Dec. 17, 1897.

STATE OF LOUISIANA:

[Cancelled law stamp.]

Civil District Court for the Parish of Orleans.

I hereby certify that on the 14 day of February, 1896, judgment was rendered in this court in the following-entitled suit in the words and figures following, to wit:

Succession of D. C. McCAN. No. 39737.

This cause came on this day to be heard on the petition of Mrs. Mary Stempel, guardian of her minor children, to annul the will of the deceased and for other relief—present, E. Howard McCaleb, attorney for said petitioner; Ernest D. Kruttschnitt, Esq., attorney for H. H. Hall, testamentary executor—where, after hearing pleadings, evidence, and argument of counsel, and for the reasons orally assigned, and the law and the evidence being in favor of petitioner and justifying the relief hereinafter granted—

It is ordered, adjudged, and decreed that the minors Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan be, and they are hereby, recognized as the sole legal and forced heirs of D. C. McCan, and as such, through their guardian, Mary Tobin Stempel, be, and they are hereby, put
78 in possession of the property of said D. C. McCan, deceased; that the provision of the will of said deceased giving the possession, control, and administration of said property to Harry H. Hall and Hester Calloway McCan be, and the same is hereby de-

creed to be, null and of no effect; that all questions not covered by this decree be reserved, and that the succession pay all costs.

Judgment rendered February 14th, 1896.

Judgment signed February 24th, 1896.

(Signed) T. C. W. ELLIS, *Judge.*

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this 26th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

(Signed) F. E. PETERSON,
Deputy Clerk.

(Endorsed:) Recorded in conveyance office book, parish of Orleans, in Book 161, fo. 310, on March 12, 1896.

Tax receipt for the year 1896 of the city of New Orleans from the estate of D. C. McCan on personal property, marked "D 1." Offered by defendant and filed Dec. 17, 1897.

No. 385.—City of New Orleans—Tax of 1896—On personal property.

Received —— —, 189–, of est. D. C. McCan sixteen thousand three hundred $\frac{00}{100}$ dollars for tax as described below:

Assessment.		For what purpose.		Amount.
Horses, cows, etc.				
Vehicles		City alimony	10 mills.	
Merchandise or stock in trade				
Money at interest, credits, bills receivable	800,000			
Money in possession	15,000			
Shares of stock				
Furniture, etc.		Interest and redemption, city bonds, under sec. 7, of act 110 of 1890	10 "	
Statuary, paintings, etc.				
Diamonds, jewelry, etc.				
Stock or interest in water craft				
Trackage, etc., of railroads				
Machinery and all motive power				
Judgments, suits, and causes in action				
Franchises, patents, copyrights, trade-marks, privileges, and charters, all canals and other ways of communication				
Bonds of all kinds				
Total taxable personal property	815,000	Total rate of tax	20 mills.	$16,300

(Signed) J. VOLLRATH, *For Comptroller.*

—— ——, *For Treasurer.*

As-essm't district.	No. of square.	Where situated.	Amount.
3	19	747 Fulton St. (office)	

[Written across the face of the preceding table:]

(Stamped across face in red ink as follows:)

COMPTROLLER'S OFFICE, CITY OF NEW ORLEANS,
NEW ORLEANS, *Jan'y 16th*, 1897.

I hereby certify that the above and foregoing is a true and correct extract from the assessment-rolls now of record and on file in this office, from which the original tax bill was taken and made out.

(Signed) JNO. F. BUTTS,
Comptroller ad Int.

TREASURER'S OFFICE, CITY OF NEW ORLEANS,
NEW ORLEANS, *Jan'y 17th*, 1897.

I hereby certify that the above and foregoing is a true and correct copy of the original tax bill in the name of est. D. C. McCan now of record and on file in this office.

(Signed) GEO. B. PENROSE, *Treasurer.*

Sworn to and subscribed before me this sixteenth day of January, 1897.

(Signed) BERNARD C. SHIELDS.
Not. Pub. [SEAL.]

80 *Decree. Entered and Filed December* 23, 1897.

United States Circuit Court, Eastern District of Louisiana, 5th Circuit. In Equity.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

Decree.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows:

First. That the City of New Orleans, its officers, agents, attorneys, and representatives, and George B. Penrose, treasurer of said city, be perpetually enjoined, forbidding and prohibiting them and each of them from in any way or by any proceeding whatever enforcing the collection of the city taxes resulting from the illegal assessment upon the assessment-rolls of the first municipal and 2nd representative district in the name of D. C. McCan for money loaned, advanced, etc., $800,000, and cash on hand, bills receivable, etc., $15,000, and from seizing, advertising, and selling or attempting to sell all or any of the property whatever belonging to the infant wards Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan and in the possession and under the control of the complainant, Mrs. Mary G. T. Stempel,

as guardian and trustee thereof, to pay and satisfy any claim or demand for said taxes assessed for the year 1896 in the name of the estate of D. C. McCan.

Second. That the assessment against the estate of D. C. McCan on the rolls of the assessment district, square 19, for moneys loaned, advanced, etc., $800,000, and cash on hand, bills receivable,
81 etc., $15,000, and that said assessment and the record thereof be, and the same is hereby, declared illegal, null, and void.

Third. That the assessment and municipal tax levied thereon, as aforesaid, be, and the same is hereby, declared illegal and violative of the constitution and laws of the State of Louisiana and the Constitution of the United States.

Fourth. And it is further ordered, adjudged, and decreed that the complainant do recover from the defendants the costs of this proceeding.

Dec. 23d, 1897.

(Signed) DON A. PARDEE,
Circuit Judge.

82 *Assignment of Errors. Filed March* 28, 1898.

United States Circuit Court, Eastern District of La., 5th Circuit. In Equity.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

Now into this honorable court come The City of New Orleans and The Board of Assessors for the Parish of Orleans and George B. Penrose, treasurer of the city of New Orleans, defendants in the above entitled and numbered cause, and assign the following errors in the decree of the court of date December 23rd, 1897:

I.

The court erred in holding that the assessment made for the year 1896 in the name of the estate of D. C. McCann was an illegal assessment for the reason that said property was legally assessed under section 7 of act 106 of 1890, Statutes of Louisiana, inasmuch as the evidence shows that the property assessed consisted of negotiable notes, mortgages, bonds, etc., all of which were at the time the assessment was made and at the time the cause was tried in the possession of an agent, residing in the city of New Orleans, to be by him collected and reinvested for account of the heirs of said estate.

II.

The court erred in decreeing that the assessment against the estate of D. C. McCann, on the rolls of the third assessment district, square 19, for moneys loaned, advanced, etc., $800,00-.00, and cash on hand, bills receivable, etc., $15,000.00, was illegal, null, and void, and the court erred in declaring that the record thereof was illegal,

null, and void, for the reason that the evidence offered by
83 complainants shows that on June 4th, 1896, the said complainants paid a tax on twenty-five hundred dollars of personal property assessed in the name of the estate of D. C. McCann for taxes due the city of New Orleans for the year 1896, and said payment was a recognition of the correctness of the assessment in the name of said estate, and estopped complainants from complaining thereof.

III.

The court erred in granting and perpetuating any injunction prohibiting the City of New Orleans, its officers, etc., and George B. Penrose, its treasurer, from in any way or by any proceedings whatever enforcing the collection of city taxes resulting from said assessment, for the reason that the same is a valid assessment, and the City of New Orleans, its officers, etc., and George B. Penrose, its treasurer, had a right and it was their duty to enforce the collection of same by all legal methods.

IV.

The court erred in holding that the assessment and municipal tax levied thereon were illegal and violative of the constitution and laws of the State of Louisiana and the Constitution of the United States.

V.

That, considering the evidence and law applicable thereto, the court erred in not refusing any injunction and in not dismissing the bills of complainant herein.

(Signed) JAMES J. McLOUGHLIN,
Ass't City Att'y, Solicitor for City of New Orleans and Geo. B. Penrose, Treasurer.

(Signed) F. C. ZACHARIE,
Solicitor for B'rd of Assessors, Par. of Orleans.

84 United States Circuit Court, Eastern District of Louisiana.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

To the honorable the United States circuit court for the eastern district of Louisiana:

The petition of The City of New Orleans and The Board of Assessors for the Parish of Orleans and George B. Penrose, treasurer of the city of New Orleans, defendants herein, respectfully represents:

That the said defendants, petitioners, are aggrieved by the decree of this honorable court herein rendered and signed on the 23rd day of December, 1897; that there is error to the prejudice of said defendants in the said decree, by which they will be irreparably injured.

Wherefore petitioners pray that they be allowed an appeal from

said decree, returnable to the Supreme Court of the United States, according to law, upon giving bond in an amount to be fixed by the court, and that Mary G. T. Stempel (wife of Edward Stempel), guardian of the infants Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Chas. Patterson McCan, and her said husband, Edward Stempel, to join, authorize, and assist her, be cited to answer said appeal; and petitioners pray for general relief.

(Signed) F. C. ZACHARIE,
Solicitor for Board of Assessors, Par. of Orleans.
(Signed) JAMES J. McLOUGHLIN,
Assistant City Attorney, Solicitor for City of New Orleans and for George B. Penrose, Treasurer.

85 *Order.*

Let an appeal be granted petitioners as prayed for, returnable to the Supreme Court of the United States, at the city of Washington, within thirty days, upon the petitioners giving bond, with good and sufficient security, in the sum of three hundred dollars, conditioned as the law directs.

(Signed) DON A. PARDEE,
Circuit Judge.

March 28th, 1898.

Bond. Filed March 31, 1898.

UNITED STATES OF AMERICA:

Know all men by these presents that we, the City of New Orleans, the Board of Assessors for the Parish of Orleans, and George B. Penrose, treasurer of the city of New Orleans, and C. Harrison Parker, are held and firmly bound, jointly and severally, unto Mary G. T Stempel (wife of Edward Stempel), guardian of the infants Fannie Tobin McCann, David Chambers McCan, Kate Elizabeth McCan, and Chas. Patterson McCan, and her husband, Edward Stempel, in the sum of three hundred dollars, lawful money of the United States of America, to be paid to said Mrs. Mary G. T. Stempel, guardian, and her husband, Edward Stempel, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 29th day of March, 1898.

Whereas the said City of New Orleans, Board of Assessors of the Parish of Orleans, and George B. Penrose, treasurer of the city of New Orleans, having heretofore, to wit, on the 28th day of March, 1898, taken an appeal to the Supreme Court of the United
86 States from and to reverse the decree rendered on the 23rd day of December, 1897, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Mrs. Mary G. T. Stempel, guardian, *vs.* City of New Orleans *et als.*, #12598 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden City of New Orleans, Board of Assessors for the Parish of Orleans, and George B. Penrose, treasurer of the city of New Orleans, shall prosecute their said appeal to effect and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) GEO. B. PENROSE,
Treasurer of the City of New Orleans.

(Signed) W. C. FLOWER,
Mayor City of New Orleans.

(Signed) E. K. SKINNER,
Pres. Board of Assessors.

(Signed) C. HARRISON PARKER.

Bond approved.

(Signed) CHARLES PARLANGE,
U. S. Judge.

UNITED STATES OF AMERICA, *Eastern District of Louisiana,* } *ss:*

Personally appeared C. H. Parker, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of one thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) C. HARRISON PARKER.

Subscribed and sworn to before me this 31st day of March, 1898.

[SEAL.] (Signed) FRANK H. MORTIMER,
United States Commissioner, Eastern District of Louisiana.

(Endorsed:) No. 12598. U. S. circuit court, eastern dist. of La. Mrs. M. G. T. Stempel *vs.* City of N. O. Bond.

87 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Mary G. T. Stempel (wife of Edward Stempel), guardian of the infants Fannie Tobin McCann, David Chambers McCan, Kate Elizabeth McCan, and Chas. Patterson McCan, and her husband, Edward Stempel, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to an order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein you are appellees and The City of New Orleans, Board of Assessors for the Parish of Orleans, and George B. Penrose, treasurer of the city of New Orleans, are appellants, to show cause, if any there be, why the judgment rendered against the said City of New Orleans,

Board of Assessors for Parish of Orleans, and Geo. B. Penrose, treasurer of the city of New Orleans, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 7 day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

CHARLES PARLANGE, *Judge.*

88 [Endorsed:] E. Return. United States circuit court, eastern district of Louisiana. No. 12598. Mrs. Mary G. T. Stempel, guardian, *vs.* City of New Orleans *et als.* Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed April 9, 1898. E. R. Hunt, clerk.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Ap'l 7, '98. On this day personally came and appeared before the undersigned authority Acee Le Blanc, deputy United States marshal for the eastern district of Louisiana, known to me as such, who, being duly sworn, deposes and says that on the 7th day of April, 1898, he served this writ on Mrs. Mary G. T. Stemple (wife of Edward Stemple), guardian of the infants Fannie Tobin McCann, Darias Chambers McCann, Kate Elizabeth McCann, and Charles Patterson McCann, and her husband, Edward Stemple, by handing the same to her attorney of record, Judge E. Howard McCaleb, in person, in the city of New Orleans, La.

ALCEÉ LE BLANC.

Sworn to and subscribed before me on this 9th day of April, 1898.

E. R. HUNT, *Clerk.*

89 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 88 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Mary G. T. Stempel, guardian, etc., *vs.* City of New Orleans *et als.*, No. 12598 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 16 day of April, A. D. 1898.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 16 day of April, A. D. 1898.

CHARLES PARLANGE, *Judge.*

Endorsed on cover: Case No. 16,859. E. Louisiana C. C. U. S. Term No., 286. The City of New Orleans, The Board of Assessors for the Parish of Orleans, and George B. Penrose, treasurer of the city of New Orleans, appellants, *vs.* Mary G. T. Stempel (wife of Edward Stempel), guardian of the infants Fannie Tobin McCann *et al.* Filed April 26, 1898.